

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

05-01-07
02:23 PM

Application of California-American Water Company (U 210 W) for an Interest Rate of 8.33% for Allowance for Funds Used During Construction (AFUDC) for its San Clemente Dam Memorandum Account and for Authorization to Place the Estimated Annual Average cost of Construction Work in Progress into Rate Base Once the Project is More Certain.

Application No. 07-02-023
Filed February 20, 2007

**CALIFORNIA-AMERICAN WATER COMPANY'S REPLY TO THE MOTION OF
THE DIVISION OF RATEPAYER ADVOCATES AND MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT TO STRIKE PORTIONS OF TESTIMONY**

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Date: May 1, 2007

**BEFORE THE PUBLIC UTILITIES COMMISSION
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Application of California-American Water Company (U 210 W) for an Interest Rate of 8.33% for Allowance for Funds Used During Construction (AFUDC) for its San Clemente Dam Memorandum Account and for Authorization to Place the Estimated Annual Average cost of Construction Work in Progress into Rate Base Once the Project is More Certain.

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Pursuant to Rule 11.1(e) of the Rules of Practice and Procedure for the California Public Utilities Commission ("Commission"), California-American Water Company ("California American Water") hereby responds to the *Motion of the Division of Ratepayer Advocates and Monterey Peninsula Water Management District to Strike Portions of the Testimony of California-American Water Company* ("Motion to Strike"), filed on April 16, 2007. In its Application, California American Water sought approval to (1) set the Allowance for Funds Used During Construction (AFUDC) rate at the Monterey District's current authorized rate of return on its San Clemente Dam Memorandum Account; and (2) to move AFUDC to Construction Work in Progress (CWIP) when the project becomes more certain to limit the period during which the San Clemente Dam Project costs are tracked in a memorandum account earning AFUDC. California American Water's Application and testimony provides detailed and substantial evidence supporting both of these requests.

As described below, the Motion to Strike must be summarily rejected because (A) MPWMD's and DRA's request is procedurally improper because it is premature and seeks to bypass the Commission's important and required procedures to determine the appropriate scope

of the proceeding; (B) California American Water's request for authority to place the estimated annual average cost of CWIP into rate base once the Environmental Impact Report (EIR) for the San Clemente Dam Project is certified, or when some other specified milestone is reached indicating that the Project is more certain, is properly within the scope of this proceeding.

I. THE COMMISSION SHOULD DENY THE MOTION TO STRIKE

A. The Motion to Strike is Procedurally Improper.

The Commission must deny the Motion to Strike because it is procedurally improper for the Commission to grant the requested relief at this time. First, the Motion to Strike improperly seeks to bypass important and required procedures to have the Commission determine that relief requested by California American Water in its Application is outside the scope of the proceeding. Second, the motion is premature.

1. MPWMD and DRA seek to bypass important and required procedural steps in the proceeding.

MPWMD and DRA seek to have the Commission bypass the Commission's procedural requirements that are essential to determine the proper scope of the proceeding. First, the parties have not yet had an opportunity to address the proper scope of the proceeding at the prehearing conference, which is scheduled for May 11. The Administrative Law Judge's Ruling Setting Prehearing Conference, issued on April 19, 2007, specifically states that the "parties should be prepared to discuss the appropriate scope of this proceeding...." (p. 2.) MPWMD and DRA have requested that the Commission pre-judge the scope of the proceeding before the prehearing conference has even taken place.

Second, MPWMD and DRA would have the Commission circumvent the Assigned Commissioner's issuance of a scoping memo for the proceeding. Because the prehearing conference has not yet taken place, the Assigned Commissioner has not yet issued a scoping memo "that describes the issues to be considered and the applicable timetable for resolution," as is required under California Public Utilities Code Section 1701.1(b).¹ Rule 7.3, which

¹ Unless otherwise stated, all statutory references are to the California Public Utilities Code.

implements §1701.1, requires the assigned commissioner to issue a scoping memo at or after the prehearing conference to determine the scope of the proceeding and the issues to be addressed in the proceeding.² It would be highly improper for the Commission to determine that certain issues are irrelevant before the scope of the proceeding has been established through the Commission's proper procedure.

2. The Motion to Strike is premature because California American Water's testimony has not yet been offered into the record.

The testimony which MPWMD and DRA seek to have stricken from the record is not yet part of the record. California American Water has made no attempt to offer the testimony into evidence and unless it is determined that a hearing is not needed, testimony can only be entered into evidence at the time of the evidentiary hearing. (*See* Rule 13.8.) Under DRA's proposed schedule, the evidentiary hearing in the proceeding will not take place for another three months,³ and therefore, it would be three months before testimony could be entered into the record. As such, MPWMD's and DRA's request for the testimony to be stricken from the record is premature.

B. California American Water's Proposal for CWIP Ratemaking Treatment in Its Application is Properly Within the Scope of this Proceeding.

California American Water's proposal for CWIP ratemaking treatment is appropriately considered as part of this proceeding. The Commission has the requisite authority to grant California American Water's request to authorize California American Water to place its estimated annual average cost of CWIP into rate base once the project becomes more certain. Furthermore, requiring California American Water to file a separate application would waste the resources of the Commission, as well as the resources of the parties to this proceeding.

² Rule 7.3 states that "[a]t or after the prehearing conference (if one is held), the assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date) and issues to be addressed."

³ DRA has proposed a schedule which would require evidentiary hearings to begin on July 30, 2007. *See* DRA's Protest, p. 5.

1. The Commission has the requisite authority to move AFUDC to CWIP as California American Water requested in this proceeding.

The Commission has the authority to grant the relief requested by California American Water in its Application for CWIP ratemaking treatment, and as such, the issue is properly within the scope of this proceeding. The fact that MPWMD and DRA disagree with California American Water's CWIP ratemaking proposal does not make it improper for California American Water to request such relief in its Application. Nor does it change the fact that the Commission has the authority to grant such relief as part of this proceeding. MPWMD recognizes in its Protest that it would be proper for California American Water to file an application requesting authority for CWIP ratemaking treatment,⁴ yet claims in the Motion to Strike that California American Water must file a separate application and should not be allowed to address the issue here.

MPWMD's and DRA's claims that California American Water's request for CWIP ratemaking treatment is barred under D.06-11-050 are unfounded.

First, the fact that the Commission directed California American Water to file an application to determine the rate of AFUDC in D.06-11-050 does not in anyway preclude California American Water from requesting additional, related relief: its proposed CWIP ratemaking treatment.⁵

Second, California American Water's request for CWIP ratemaking treatment is entirely consistent with D.06-11-050. In that decision, the Commission noted that the San Clemente Dam Project is a "lengthy and uncertain project" and that "removing the project from ratebase when the dam's usefulness is unclear... is consistent with the treatment prescribed in Section 455.5." (D.06-11-050, *66.) However, the Commission has previously recognized "special circumstances warranting a departure from standard ratemaking practice, which allows project

⁴ MPWMD's Protest (filed March 24, 2007), p. 6 (asserting that such application should only be filed "[w]hen CAW has a final project proposal for review.")

⁵ D.06-11-050, 2006 Cal. PUC LEXIS 479.

costs to be included in rates only after the project is found to be ‘used and useful.’” (D.06-12-040, 2006 Cal. PUC LEXIS 422, *33.) Importantly, D.06-11-050 does not preclude the Commission from granting California American Water’s request as part of this proceeding because California American Water is seeking to place the estimated annual average cost of CWIP into rate base for ratemaking purposes only after the Project is significantly more certain. As set forth in its Application, California American Water seeks to place CWIP into rate base only after it meets a specified milestone, such as when the EIR is certified, when the final permits are obtained, or when the contracts for construction have been finalized, any of which will provide the Commission with adequate information to review a “final project proposal.” In any event, MPWMD and DRA will have the opportunity to review the project costs for reasonableness and that ability is in no way compromised by California American Water’s CWIP ratemaking proposal.

Third, California American Water’s request to place its estimated annual average cost of CWIP into rate base once the actual physical Project becomes certain is supported by the Commission’s longstanding ratemaking policy to place CWIP in rate base rather than apply AFUDC. (D.03-02-030, 2003 Cal. PUC LEXIS 121, **41-42.)

2. Requiring California American Water to file a separate application to renew its request for CWIP ratemaking treatment would unnecessarily waste the resources of the Commission and the parties to the proceeding.

Requiring California American Water to file a separate application to renew its request for CWIP treatment would unnecessarily waste this Commission’s resources, as well as the other parties’ resources. The Commission will make findings and reach conclusions on many issues that are common to both its determination of California American Water’s AFUDC rate for the San Clemente Dam Project and its authorization of California American Water’s CWIP ratemaking treatment proposal. Among others, these common issues include: the associated risks of the San Clemente Dam Project investment; the status of the San Clemente Dam Project, including the environmental review and permitting processes; and the impacts of delaying recovery of the San Clemente Dam Project on customer rates. For purposes of administrative

efficiency, California American Water's CWIP ratemaking proposal should be heard by the same Administrative Law Judge and assigned Commissioner who hear evidence regarding the AFUDC rate.

3. California American Water's proposal for CWIP ratemaking treatment should be considered in this proceeding because it will protect both California American Water and its customers.

MPWMD's and DRA's request to remove from this proceeding California American Water's proposal to move the San Clemente Dam Project costs from AFUDC to CWIP fails to account for the fact that California American Water's CWIP ratemaking proposal will benefit both customers and the company. As California American Water explained in its testimony, limiting the duration of AFUDC treatment on the Project investment and then using CWIP will smooth capital cost recovery, mitigate the rate spike in the cost of service and reduce the total dollar amount customers will ultimately pay in rates. Requiring California American Water to file a new application in a separate proceeding will only make it more difficult for the Commission to fully and adequately address the customer impacts of delaying recovery of the cost of capital for the San Clemente Dam Project.

II. CONCLUSION

For all of the foregoing reasons, the Commission should expeditiously and summarily deny MPWMD's and DRA's Motion to Strike.

Dated: May 1, 2007

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PROOF OF SERVICE

I, Michelle Chavez, declare as follows:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years, and not a party to the within cause; my business address is STEEFEL, LEVITT & WEISS, One Embarcadero Center, 30th Floor, San Francisco, California 94111-3719. On May 1, 2007, I served the within:

California-American Water Company's Reply to the Motion of the Division of Ratepayer Advocates and Monterey Peninsula Water Management District to Strike Portions of Testimony

on the interested parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Please see attached Service List



(BY PUC E-MAIL SERVICE) By transmitting such document electronically from Steefel, Levitt & Weiss, San Francisco, California, to the electronic mail addresses listed above. I am readily familiar with the practice of Steefel, Levitt & Weiss for transmitting documents by electronic mail, said practice being that in the ordinary course of business, such electronic mail is transmitted immediately after such document has been tendered for filing. Said practice also complies with Rule 1.10(b) of the Public Utilities Commission of the State of California and all protocols described therein.



(BY MAIL) By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Steefel, Levitt & Weiss, San Francisco, California following ordinary business practice. I am readily familiar with the practice at Steefel, Levitt & Weiss for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 1, 2007 at San Francisco, California.


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